

**Part 11 General Servicing Responsibilities****Section 1 General Servicing Requirements****262 Relationships and Responsibilities (7 CFR 762.140(a))**

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**A****Lender Role**

**Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for collateral, and remaining the mortgagee or secured party of record.**

**The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.**

The lender is responsible for:

- C servicing their guaranteed loans as they service any other loan in their portfolio
- C complying with all FSA program requirements.

FSA servicing regulations are designed to accommodate standard agricultural lending practices, so lenders can be assured they meet program regulations if they:

- C service guaranteed loans in a prudent, traditional manner
  - C comply with specific program eligibility guidelines and loan limits.
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**263 Borrower Supervision (7 CFR 762.140(b))**

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**A****Overview**

Lenders must supervise guaranteed loan borrowers in a manner similar to their supervision of regular loan customers. Lenders are expected to apply standard, agricultural loan servicing principles to their guaranteed customers.

Examples of standard borrower supervision include the following:

- C maintaining regular contact with the farmer
  - C periodically discussing the farmer's goals and monitoring progress in meeting these goals
  - C accounting for loan proceeds by monitoring expenditures and discussing how these will facilitate the achievement of the operator's expressed goals
  - C monitoring collateral and tracking the sale of security.
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**B****Lender  
Supervision of  
Borrowers**

**The lender's responsibilities regarding borrower supervision include, but are not limited to the following:**

- C ensuring loan funds are not used for unauthorized purposes
- C ensuring borrower compliance with the covenants and provisions contained in the promissory note, loan agreement, mortgage security instruments, any other agreements, and this part

**Note: Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.**

- C ensuring the borrower is in compliance with all laws and regulations applicable to the loan, the collateral, and the operations of the farm
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**263 Borrower Supervision (7 CFR 762.140(b)) (Continued)**

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**B****Lender  
Supervision of  
Borrowers  
(Continued)**

- C receiving all payments of principal and interest on the loan as they fall due and promptly disbursing to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee**
- C performing an annual analysis of the borrower's financial condition to determine the borrower's progress.**

The loan application and other loan specific documents, including FSA-1980-15, Conditional Commitment, will detail the purposes and conditions for the loan. Lenders must inform FSA of any changes in fund use. SEL's must first receive FSA concurrence before allowing a change in loan fund use. If a borrower uses loan funds improperly, the lender must take steps to correct the violation. If improper use of loan funds results in a loss claim, lenders must make every effort to collect the loan's remaining outstanding debt and minimize loss to FSA.

Failure by the lender to report a borrower violation to FSA in a timely manner could result in the reduction or denial of a loss claim in case of default.

The lender shall obtain a perfected security interest in the loan collateral. Lenders must obtain secure liens on all collateral as outlined in FSA-1980-15. A loss claim may be reduced if a lender failed to perfect the loan security.

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**A****Lender Servicing  
of Collateral**

The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

- C** obtain income and insurance assignments when required
- C** ensure the borrower has or obtains marketable title to the collateral
- C** inspect the collateral as often as deemed necessary to properly service the loan
- C** ensure the borrower does not convert loan security
- C** ensure proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral
- C** ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy (Part 13), receivership, insolvency, condemnation, or other litigation
- C** ensure taxes, assessments, or ground rents against or affecting the collateral are paid
- C** ensure adequate insurance is maintained
- C** ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.

The lender should refer to the specific loan documents, such as FSA-1980-15, for additional servicing requirements on a loan-by-loan basis.

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**B****FSA Monitoring  
of Collateral  
Servicing**

FSA shall notify a lender that does not have adequate procedures in place to ensure that the collateral is being serviced to FSA standards. Failure on the part of the lender to take action to correct the deficiency may result in denial of future loan applications or revocation of status until the deficiency is resolved. Failure by FSA to discover inadequate procedures during its monitoring review does not preclude FSA from taking actions necessary as a result of this deficiency at a later date.

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**265 Annual Analysis of Borrower's Financial Condition (7 CFR 762.140(b)(5))**

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**A****Overview**

The lender must perform an annual financial analysis of the borrower within 90 calendar days of the end of the borrower's operating cycle. SEL's and CLP lenders must submit documents to FSA in support of this analysis. PLP lenders must perform a financial analysis and report on a borrower's financial progress according to the terms of their FSA-1980-38. This paragraph describes the specific requirements for SEL's and CLP lenders.

**PLP lenders will perform an annual analysis in accordance with the requirements established in the Lender's Agreement.**

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**B****Financial  
Analysis of  
Borrower by  
SEL**

**The annual analysis will include:**

- C for loans secured by real estate only, the analysis for standard eligible lenders must include a balance sheet**
  - C for loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends, and changes in financial performance, and compare actual to planned income and expenses for the past year**
  - C an account of the whereabouts or disposition of all collateral**
  - C a discussion of any observations about the farm business with the borrower.**
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**C**

**Documents  
Submitted to  
FSA by SEL in  
Support of  
Annual Analysis**

[7 CFR 762.141(d)] SEL shall provide the following to FSA:

**C borrower's Balance Sheet and Income and Expense Statement for the previous year**

**C for lines of credit, the cash flow for the borrower's operation that projects a feasible plan or better for the upcoming operating cycle**

**Note: The standard eligible lender must receive approval from the Agency before advancing future years' funds.**

**C an annual farm visit report or collateral inspection.**

These documents must be submitted to FSA within 30 calendar days of the completion of the annual financial analysis.

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**D**

**Annual Analysis  
of Borrower by  
CLP Lender**

For loans secured by real estate only, **CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly.**

**For loans secured by chattels, all lenders will review the borrower's progress regarding business goals, trends and changes in financial performance, and compare actual to planned income and expenses for the past year.**

**CLP lenders shall maintain an account of the whereabouts or disposition of all collateral.**

**CLP lenders shall document a discussion of any observations about the farm business with the borrower.**

If the lender determines that an analysis should be performed, the analysis may be based on a comparison of current and past balance sheets. If a balance sheet analysis is not performed by the lender, information that confirms the borrower is strong financially and reasons why the lender is confident of the borrower's progress must be provided by the lender. Examples of information that would indicate the financial strength of the borrower would include deposit or investment accounts with the lender.

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**E****Documents  
Submitted to  
FSA by CLP in  
Support of  
Annual Analysis**

**[7 CFR 762.141(c)]** CLP lenders shall submit the following to FSA in support of their annual analysis:

- C** a written summary of the lender's annual analysis of the borrower's operation

**Note:** This summary should describe the borrower's progress and prospects for the upcoming operating cycle. This annual analysis may be waived or postponed if the borrower is financially strong. The summary will include a description of the reasons an analysis was not necessary.

- C** for lines of credit, an annual certification stating that a cash flow projecting at least a feasible plan has been developed, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

These documents must be submitted to FSA within 30 calendar days of the completion of the annual financial analysis.

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**266 Lender Reporting Requirements (7 CFR 762.141)**

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**A****Overview**

This section covers the general reporting requirements for all lenders. These reporting requirements are not tied to any specific servicing action. Many servicing actions require additional reports and updates from lenders, which this paragraph does not cover. See Exhibit 15 for a checklist of all lender reporting requirements.

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**B****General  
Reporting  
Requirements**

**Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower.**

- C When the guaranteed loan becomes 30 days past due, and following the lender's meeting or attempts to meet with the borrower, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is cured either through restructuring or liquidation.**
- C All lenders will submit the appropriate guaranteed loan status reports as of March 31 and September 30 of each year.**
- C PLP lenders will submit additional reports as required in their Lender's Agreement.**
- C A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.**

Lenders shall submit FSA-1980-44, Guaranteed Farm Loan Default Status Report, to comply with the requirement to report borrower defaults. This report is used first to notify FSA that a loan is in default, second, as a progress report on the lender's attempt to make the loan current again, and third, once a loan is brought current, as a means to notify FSA of the new loan terms and conditions. See Part 12 for more details on this reporting requirement.

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**266 Lender Reporting Requirements (7 CFR 762.141) (Continued)**

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**B****General  
Reporting  
Requirements  
(Continued)**

Lenders should submit FSA-1980-41, Guaranteed Farm Loan Status Report, to comply with the requirement to submit a semi-annual loan status report. This report provides an update on the borrower's progress on loan payback and the loan's terms and conditions.

Lenders should submit FSA-1980-26 to satisfy the requirement for an annual report on collection activities. See Part 14 for more details on this reporting requirement.

If any deficiencies in loan servicing are detected by FSA, FSA will work with the lender to correct any problems. If the lender fails to correct any loan servicing deficiency, and the deficiency results in a loss, the loss claim may be reduced or denied.

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**267-277 (Reserved)**

## Section 2 General Servicing Actions

278 Subordination of Guaranteed Loan Security (7 CFR 762.142)

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## A

## Overview

Subordination of guaranteed loan security. **The lender may not subordinate its interest in property which secures a guaranteed loan except** either of the following:

- C the lender may subordinate its security interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so a lender can make a loan for annual production expenses**
- C the Agency's National Office may provide an exception to the subordination prohibition if such action is in the Agency's best interest.** FSA refusal to grant an exception to published regulations is not appealable. All requests for exceptions must be submitted to the National Office by the FSA State Office with a recommendation for approval to be considered for approval.

**However, in no case can the loan made under the subordination include tax exempt financing.**

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## B

**Lender Request  
for  
Subordination of  
Guaranteed  
Loan Security**

FSA may approve a lender's request to subordinate crops, feeder livestock, livestock offspring, milk, produce, and other normal income security that were not produced through advances made under the guaranteed loan, to allow a borrower to obtain unguaranteed annual operating credit. Multi-year assignments of FSA program payments will not be subordinated. However, in those cases where normal income security is being subordinated so another lender can make a loan for annual production expenses, any amount that exceeds the guaranteed loan payment may be released.

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**279 Subordination of Direct Loan Security (7 CFR 762.142(c))**


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**A**
**Direct Loan  
Subordination  
When  
Guaranteed  
Loan Is Being  
Made**

The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of the regulations § 1962.30 of FmHA Instruction 1962-A of this chapter and § 1965.12 of FmHA Instruction 1965-A governing Agency direct loan subordinations are met and only in the following circumstances:

- C** to permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, livestock offspring, or livestock products, such as milk, eggs, wool, etc.
  - C** when the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring
  - C** when the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected
  - C** to permit a Line of Credit to be advanced for annual operating expenses, subject to the conditions of subparagraph B.
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**B**
**Direct Loan  
Subordination to  
Secure LOC**

The Agency may subordinate its basic security in a direct loan to permit guaranteed line of credit only when both of the following additional conditions are met.

- C** The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.
  - C** The applicant cannot obtain sufficient credit through a conventional guaranteed loan without a subordination. The applicant must request LOC through at least 1 participating lender and document that credit is not available without a subordination.
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## 280 Partial Releases (7 CFR 762.142(b))

**A****Overview**

A partial release is the release of a portion of security used as collateral for a loan.

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**B****Lender Request  
for Partial  
Release**

**A lender may release guaranteed loan security without FSA concurrence as follows:**

- C when the security item is being sold for market value and the proceeds will be applied to the loan in accordance with lien priorities**

**Note:** In the case of term loans, proceeds will be applied as extra payments and not as a regular installment on the loan.

- C the security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security**

**Note:** FSA input may be requested when there is a question of whether a reasonable value is being obtained for the security.

- C the security item has no present or prospective value.**

**Note:** Older security items that are now junk or obsolete may be left off of the security agreement when it is updated. Regardless, proceeds from the sale of these items as scrap or salvage should be applied to the loan as an extra payment.

**A partial release of security may be approved in writing by the Agency upon the lender's request when:**

- C proceeds will be used to make improvements to real estate that increase the value of the security by an amount equal to or greater than the value of the security being released**

**Example:** A borrower may sell a parcel of real estate to provide funds for construction of a dwelling.

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**B****Lender Request  
for Partial  
Release  
(Continued)**

- C** security will be released outright, with no consideration, but the total unpaid balance of the guaranteed loan is less than or equal to 75 percent of the value of the security for the loan, excluding the value of growing crops or planned production, after the release, based on a current appraisal of the security
- C** significant income generating property will not be released unless it is being replaced, and business assets will not be released for use as a gift or any similar purpose

**Note:** The release must serve a purpose other than to simply allow a borrower to obtain clear title to security items. Cropland, significant machinery, and business assets will not be released, unless it is being replaced, proceeds are being used for authorized loan purposes, or the borrower's cash flow or security position is being improved.

- C** Agency concurrence is provided in writing to a lender's written request.

**Note:** Standard eligible lenders and CLP lenders will submit the following to the Agency:

- C** a current balance sheet on the borrower
- C** a current appraisal of the security

**Note:** Unless specifically requested by FSA, the lender will not be required to provide an appraisal of any real estate security being released. **Based on the level of risk and estimated equity involved, the Agency shall determine what security needs to be appraised. Any required security appraisals must meet the requirements of § 762.127.**

- C** a description of the purpose for the release
- C** any other information requested by the Agency needed to evaluate the proposed servicing action.

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**280 Partial Releases (7 CFR 762.142(b)) (Continued)**

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**C****FSA Response to Request for Partial Release**

**The lender will provide the Agency copies of any agreements executed to carry out the servicing action. PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.**

Written consent of any prior or junior lien holder must be obtained and delivered to FSA if any proceeds are not applied according to lien priority.

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**281 Transfers and Assumptions (7 CFR 762.142(d))**

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**A****Overview**

A transfer and assumption is an action whereby a new, eligible guaranteed loan applicant assumes an existing guaranteed loan. The transfer and assumption process is very similar to the application and approval of a new loan.

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**B****Lender Request for a Transfer and Assumption**

**For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing. For standard eligible and CLP lenders, the transferee must apply for a loan in accordance with § 762.110 (Part 5), including a current appraisal, unless the lien position of the guaranteed loan will not change, and any other information requested by the Agency to evaluate the transfer and assumption.**

**PLP lenders may process transfers and assumptions in accordance with their agreement with the Agency.**

**Any required security appraisals must meet the requirements of § 762.127 (paragraphs 181 through 183).**

Lenders must also submit a request to release the transferor, guarantor, or any third party from liability according to paragraph 285.

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**C****Conditions and Requirements for a Transfer and Assumption**

The following limitations apply to transfers and assumptions.

- C** The transferee must meet the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this subpart.
- C** The lender will use its own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.
- C** The lender must execute a modification of the guarantee provided by the Agency to designate the party that assumed the guaranteed debt, the amount of debt at the time of the assumption (including interest that is being capitalized), and the new loan terms, if applicable.
- C** The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.

Additional limitations that apply to transfers and assumptions are:

- C** the market value of the security being acquired, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the guaranteed loan plus any prior liens
- C** if a transferee has an outstanding direct or guaranteed loans, the total combined direct and guaranteed indebtedness may not exceed the market value of the security or the maximum loan limits described in subparagraph 244 A.

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**281 Transfers and Assumptions (7 CFR 762.142(d)) (Continued)**

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**D****FSA Response to  
Request for  
Transfer and  
Assumption**

**The Agency will review, approve or reject the request in accordance with the time frames in § 762.130 of this part (Part 6).**

**The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 762.146(c) (paragraph 285) are met.**

FSA will treat a request for a transfer as an application for a new guaranteed loan; however, a new guarantee fee will not be collected for the amount assumed.

**The lender will provide the Agency copies of any agreements executed to carry out the servicing action.**

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**282 Additional Loans or Advances (7 CFR 762.146(a))**

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**A****Additional Loans  
or Advances**

**SEL and CLP lenders must not make additional loans or advances without prior written approval of the Agency, except as provided in the borrower's Loan or Line of Credit Agreement.**

**The PLP lender may make additional loans or advances in accordance with the lender's agreement with the Agency.**

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**283 Emergency Advances (7 CFR 762.146(a))**

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**A****Issuance of an  
Emergency  
Advance Under  
LOC**

**In cases of a guaranteed line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling. The emergency advance will be made as an advance under the line and not as a separate note. The lender's loan documents must contain sufficient language to provide that any emergency advance will constitute a debt of the borrower to the lender and be secured by the security instrument. The following conditions apply:**

- Ⓒ the loan funds to be advanced are for authorized operating loan purposes**
  - Ⓒ the financial benefit to the lender and the Government from the advance will exceed the amount of the advance**
  - Ⓒ the loss of crops or livestock is imminent unless the advance is made.**
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**B****Lender Request  
for an  
Emergency  
Advance**

**SEL's and CLP lenders must obtain written permission from FSA before an emergency advance on LOC can be made.**

**Emergency advances are authorized for ongoing operations where the need is an aberration and will not reoccur. They may be used even in the case of OL's with a 1-year term, or in the last year of LOC. Where liquidation is imminent, advances will be made as protective advances according to 7 CFR 762.149 and Part 14. Protective advance requirements are found in § 762.149.**

**To request an emergency advance, SEL's and CLP lenders must submit the following to FSA:**

- Ⓒ a narrative that explaining that the loss of crops and/or livestock is imminent and can be prevented by an infusion of cash**
- Ⓒ cash flow projections**
- Ⓒ if necessary, a copy of the modified loan note that reflects the additional cash advanced.**

**PLP lenders may make emergency advances according to their FSA-1980-38.**

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**284 Interest Rate Changes (7 CFR 762.146(d))**

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**A****Overview**

**The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.**

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**B**

**Procedures  
Lender Must  
Follow to  
Change Interest  
Rate**

**If the loan has been sold on the secondary market, the lender must repurchase the loan or obtain the holder's written consent.**

**To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.**

**If a new note is taken, it will be attached to and refer to the original note.**

**The lender will inform the Agency of the rate change.**

The lender shall inform FSA of the rate change by completing RD-1980-47 and forwarding it to the County Office.

Lenders do not need to seek FSA concurrence to change an interest rate.

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**285 Release of Liability Upon Withdrawal (7 CFR 762.146(b))**

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**A**

**General  
Requirements**

**An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met.**

- C The individual to be released has withdrawn from the farming or ranching operation.** The lender must submit a narrative outlining who is to be released and why.
  - C A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments.** A copy of the divorce decree must be submitted with the lender's request. The lender must document that release of divorced borrowers is a common practice carried out in their nonguaranteed loan portfolio.
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## 285 Release of Liability Upon Withdrawal (7 CFR 762.146(b)) (Continued)

**A****General  
Requirements  
(Continued)**

- C The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued.**
- C The ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made.**
- C Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a general or limited partnership may not be released from liability.**  
Partners, parents, cosigners, stockholders, and entity members may often be released from liability. However, when the guaranteed loan is made to individuals farming as a partnership, and each partner is fully liable, release of 1 partner would terminate the partnership and the existence of the entity to which the loans were made. The lender must document that release of withdrawing members is common in their unguaranteed portfolio and all other conditions in this paragraph are met.
- C The remaining liable party projects a feasible plan (see § 762.102(b)).** The lender must submit a cash flow projection for the remaining liable party with the request for release. A release will not be approved when a loss is probable.

**B****Lender Request  
for Release of  
Borrower From  
Liability Upon  
Withdrawal**

PLP lenders shall submit documentation to FSA in support of a release from liability, as specified in FSA-1980-38. Upon review of the request, the local office must forward the request and a recommendation to the State Office for action.

## A

## Overview

**Only OL may be consolidated.**

**Existing lines of credit may only be consolidated with a new line of credit if the final maturity date and conditions for advances of the new line of credit are made the same as the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.**

**The borrower must project a feasible plan after the consolidation. See § 762.102(b) for definition of feasible plan.**

**Guaranteed OL may not be consolidated with a line of credit, even if the line of credit has been rescheduled.**

The combining of outstanding principal and interest balances of 2 or more OL's or LOC's constitutes a consolidation of debt.

The following FSA loans cannot be consolidated:

- ⌄ FO's
- ⌄ **OL's or lines of credit secured by real estate**
- ⌄ **OL's or lines of credit with outstanding Interest Rate Buydown Agreement, IA Agreement, or SAA**
- ⌄ non-FSA loans.

The following conditions also apply to consolidation:

- ⌄ **guaranteed loans made before October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991**
- ⌄ when 2 or more OL's or LOC's are consolidated the combined principal and interest must be kept separate; capitalization of interest is not allowed when loans are only being consolidated.

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**286 Consolidation of Debt (7 CFR 762.146(e)) (Continued)**

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**B****Request for Consolidation**

SEL's must submit a feasible plan to FSA for concurrence before consolidating loans. CLP and PLP lenders may consolidate loans as long as the requirements of this paragraph are met.

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**C****Lender Actions to Consolidate Loans**

**A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained.**

**The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.**

**A Modification of Guarantee will be executed. The modification will indicate the consolidated loan amount, new terms, and percentage of guarantee, and will be attached to the originals of the guarantees being consolidated. If loans with a different guarantee percentage are consolidated, the new guarantee will be at the lowest percentage of guarantee being consolidated.**

**Any holders must consent to the consolidation, or the guaranteed portion must be repurchased by the lender.**

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**287 Substitution of Lender (7 CFR 762.105)**

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**A****Overview**

When a borrower wishes to move their guaranteed loan from 1 lender to another, or a lender wishes to sell a guaranteed loan to another lender, with or without the borrower's consent, FSA must process a substitution of lender.

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**B****Lender****Requirements**

**A new eligible lender may be substituted for the original lender, if the original lender concurs, under the following conditions.**

**C The Agency approves of the substitution in writing. The new lender will:**

**C agree in writing to assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan**

**C execute a lender's agreement if one is not in effect**

**C submit a request to FSA to be substituted**

**C agree to notify any holder written notice of the substitution.** If the rate and term are changed, written concurrence or repurchase is required.

**C The original lender will assign their promissory note, lien instruments, loan agreements, and other documents to the new lender. The guarantee documents will then be assigned to the new lender. The original lender must:**

**C execute a modification of the guarantee provided by the Agency to identify the new lender, and contain the amount of debt at the time of the substitution, and the new loan terms if applicable**

**C assign their promissory note, lien instruments, loan agreements, and other documents to the new lender**

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## 287 Substitution of Lender (7 CFR 762.105) (Continued)

**B****Lender Requirements (Continued)**

- C** if the loan is subject to an existing IA Agreement, submit a request for subsidy for the partial year that they have owned the loan

**Note:** FSA-1980-64 can then be transferred to the new lender.

- C** if the original lender does not concur, the substitution cannot take place. If the borrower still wants to move their loan, the new lender may refinance the debt of the original lender.

**C****Lender Name or Ownership Changes**

**When a lender begins doing business under a new name or, undergoes an ownership change, the lender will notify the Agency.**

**The lender's CLP or PLP status is subject to reconsideration when ownership changes.** If a status lender is merged with or purchased by a nonstatus lender, and the original lender's management, operating policies, Credit Management System, and personnel are changed as a result, the lender's CLP or PLP status will be revoked. If the newly merged or purchased lender will continue to operate the status lender substantially as it has been managed in the past, revocation may not be necessary. If a lender sells any guaranteed loans in their entirety, the State Office shall determine whether volume requirements of subparagraph 52 D are still being met.

**The lender will execute a new Lender's Agreement.**

The new lender must provide FSA with:

- C** its new tax ID number
- C** a list of all its branches where they will service guaranteed loans, their addresses, and responsible contacts.

**Note:** An interim request for subsidy payment from the original lender is not required when the entire lender has changed.

**A****Overview**

When receiving a debt writedown, a borrower is required to execute FSA-1980-89, Shared Appreciation Agreement for Guaranteed Loans, that entitles the lender to future payments if the real estate used to secure the written down loan appreciates in value. FSA-1980-89 gives both the lender and FSA the possibility of recapturing money that was written off as a result of a debt writedown.

Before executing FSA-1980-89, the lender must obtain an appraisal of the real estate that is used to secure the written down loan. The appraisal figure will be recorded on FSA-1980-89. The appraisal must meet all the requirements listed in paragraph 2 and be paid for by the lender or borrower. The appraisal must be dated within 1 year of FSA-1980-89 execution to be valid.

All servicing requirements apply to all existing SAA's that were entered into before SAA becoming FSA-1980-89. For purposes of this handbook, wherever FSA-1980-89 is referred to, it will also pertain to existing SAA's.

All requirements in this paragraph apply to all lender types, unless otherwise noted.

**B**
**Lender  
Responsibilities  
When Servicing  
FSA-1980-89**

**The lender is responsible for:**

- C monitoring the borrower's compliance with the Shared Appreciation Agreement**
- C notifying the borrower of the amount of recapture due**
- C beginning October 1, 1999, a notice of the agreement's provisions not later than 12 months before the end of the agreement**
- C reimbursing the Agency for its pro-rata share of recapture due.**

Continued on the next page



**C**  
**Events That**  
**Trigger**  
**Recapture**

**Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:**

- C on the conveyance of the real estate security (or a portion thereof) by the borrower**

**Note:** If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 762.141(b) (paragraph 280); and transfer of title to the spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.

- C on the repayment of the loans**

- C if the borrower ceases farming operations.**

Recapture may also occur in either of the following cases:

- C the note FSA-1980-89 is attached to is accelerated**
- C the borrower dies and there is no spouse to whom the property will be conveyed.**

After FSA-1980-89 has been executed, the lender must monitor the borrower's compliance with FSA-1980-89. This includes determining when an event that activates FSA-1980-89 occurs.

When the borrower performs an action that triggers the collection under FSA-1980-89, the lender will obtain an appraisal of the collateral, determine the recapture due, if any, and notify the borrower of the amount due in writing. **Security values will be determined by appraisals obtained by the lender and meeting the requirements listed in 7 CFR 762.127** (paragraphs 181 through 183). The lender will pay for the appraisal or recapture the appraisal expense from the borrower. If the sale of security triggers recapture and the price received for the security is higher than its appraised value, then the sale price will serve as the upper limit when calculating incremental increase in the appreciation of security.

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**C****Events That  
Trigger  
Recapture  
(Continued)**

After recapture, the lender will give FSA its pro-rata share of the proceeds or service the account according to subparagraph F.

Use the letter in subparagraph D to remind the borrower of the FSA-1980-89 commitment.

**D****Example of  
Letter  
Reminding Loan  
Borrowers of  
Potential  
Writedown  
Recapture**

The following is an example of a letter for reminding loan borrowers of potential writedown recapture.

Borrower's Address

Dear (Borrower):

On Month, Day, Year, Name of Lender, wrote down \$\_\_\_\_\_ of a debt that you owed in connection with a guarantee that was provided by the Farm Service Agency (FSA). In consideration for receiving this writedown, you executed a 10-year Shared Appreciation Agreement (Agreement) in connection with the real estate that you pledged as collateral for this loan. We have attached a copy of the Agreement for your reference.

This letter is to remind you of the possibility that you may have to repay all or a portion of the amount of your loan that was written down. The Agreement that you signed requires you to repay all or a portion of the debt written down if the real estate that secured the loans increased in value and one of the following occurs:

- C Ten (10) years have passed since you signed the Agreement;
- C Title of the real estate security (or a portion thereof) was conveyed (with certain exceptions);
- C The remainder of the loan has been repaid; or
- C You have quit farming.

If you believe the value of your property has increased, you will need to consider this potential liability when you make future plans. The amount of repayment cannot exceed the amount written down.

If you would like any additional information on how this Agreement can affect you and what actions you need to take, please contact this office.

Sincerely,

Lender's Representative

Enclosure

Continued on the next page

**E****Calculating  
Recapture**

**The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of write down as shown on the Shared Appreciation Agreement.**

**C If recapture is triggered within 4 years of the date of the Shared Appreciation Agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

**C If recapture is triggered after 4 years from the date of the Shared Appreciation Agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.**

**The amount of recapture will not exceed the amount of writedown shown on the Shared Appreciation Agreement.**

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**F****Servicing  
Recapture Debt**

**If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may do 1 of the following.**

- C   Reschedule the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to make amortized payments on the recapture debt plus pay all other obligations. In such case, the recapture debt will not be covered by the Guarantee. The lender will send FSA its share of every payment when its received.**
- C   Pay the Agency its pro rata share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Guarantee.**
- C   Service the account in accordance with § 762.149.**

**If recapture is triggered, and the borrower is unable or is able, but unwilling to pay the recapture in a lump sum, the lender will service the account in accordance with § 762.149.**

**Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.**

**All appraisal fees will be paid by the lender.** The lender may pass the fee on to the borrower. Within 30 calendar days of receiving a notice of the appreciation due to the lender, the borrower has 30 calendar days to repay the debt in a lump sum.

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Continued on the next page

**288 Servicing SAA's (7 CFR 762.147) (Continued)**

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**G****Basis for the  
Amount of  
Recapture**

Because of 2 consecutive years of drought that destroyed crops, a farmer and lender devised a restructuring plan where \$200,000 of remaining debt was written down to \$100,000 and FSA-1980-89 was executed. FO had been guaranteed by FSA at 90 percent. An appraisal at the time of the writedown valued the farmer's security at \$75,000.

One year later the farmer sells his farm for \$85,000. The Basis for the Amount of Recapture is equal to:

Value of real estate security (appraisal or sale price, whichever one is higher) at the time of a recapture triggering event minus value of real estate security when FSA-1980-89 was executed.

Basis for the Amount of Recapture:  $\$85,000 - \$75,000 = \$10,000$ .

Since Basis for the Amount of Recapture is positive, the borrower will be required to pay the lender a percentage of the recaptured monies. The percentage to be paid to the lender within the first 4 years of FSA-1980-89 execution is 75 percent (the percentage drops to 50 percent 4 years after FSA-1980-89 execution). Therefore, the farmer owes his lender the following:

$\$10,000 \times 75\% = \$7,500$  due the lender.

FSA is entitled to the portion of the shared appreciation equal to the rate of the guarantee on the loan. Therefore, in this case, FSA's pro-rata share is equal to:

$\$7,500 \times 90\% = \$6,750$  due FSA.

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**289-299 (Reserved)**